

## ORDINANCE NO.

AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE I, IV, V, VI, VIII, IX, XI, XIA, XII, XIII, XIV, XV, XXV AND ARTICLE XXVI RELATING TO WIND TURBINE AND WINDMILLS IN SUSSEX COUNTY.

WHEREAS, pursuant to House Substitute No. 1 for House Bill No. 70, which was passed in 2009, a new Section 8060 was created in Title 29 of the Delaware Code establishing how restrictive local regulations can be regarding wind turbines and windmills.

WHEREAS, in 2010 Section 8060 was amended to include provisions making any existing county regulations that were inconsistent with Section 8060 void.

WHEREAS, this amendment also stated that no conditional use or any other zoning review process shall be required for wind turbines and windmills, thus eliminating the Board of Adjustment from reviewing and granting variances for wind turbines and windmills.

NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

**Section 1.** Amend Sussex County Code, Chapter 115, Article I, §115-4 B., DEFINITIONS AND WORD USAGE, by inserting the following definition of “WIND TURBINE or WINDMILL” between the definitions of “WATERWAY” and “YARD” to read as follows:

WIND TURBINE or WINDMILL

A device exterior to a building that is designated to convert naturally occurring wind into usable electricity for on-site or off-site use. Such term shall also include any supporting pole or equipment that is attached to the wind turbine for electrical purposes. The terms “wind turbine” and “windmill” shall have the same meaning. Example of similar references to wind turbines may include, but are not limited to, wind turbine, windmill, wind powered systems, wind powered generator, etc.

**Section 2.** Amend Sussex County Code, Chapter 115, Article IV, §115-21 A(7), PERMITTED ACCESSORY USES, by deleting the phrase “Windmills and wind-powered generators.” and inserting in lieu thereof a new sentence to read as follows:

(7)

A wind turbine which meets § 115-194.4 as a permitted use. [Windmills and wind-powered generators.]

**Section 3.** Amend Sussex County Code, Chapter 115, Article IV, §115-23 C(13), SPECIAL USE EXCEPTIONS, by deleting said subsection in its entirety and renumbering the remaining subsections accordingly.

**Section 4.** Amend Sussex County Code, Chapter 115, Article V, §115-30, PERMITTED

ACCESSORY USES, by inserting the following sentence “A wind turbine which meets § 115-194.4 as a permitted use.” at the beginning of said section.

**Section 5.** Amend Sussex County Code, Chapter 115, Article V, §115-32 C, SPECIAL USE EXCEPTIONS, by deleting the phrase “Windmills and wind-powered generators.” as it appears therein.

**Section 6.** Amend Sussex County Code, Chapter 115, Article VI, §115-40 C, SPECIAL USE EXCEPTIONS, by deleting the phrase “Windmills and wind-powered generators.” as it appears therein.

**Section 7.** Amend Sussex County Code, Chapter 115, Article VIII, §115-54, PERMITTED ACCESSORY USES, by inserting the following sentence “A wind turbine which meets § 115-194.4 as a permitted use.” at the beginning of said section.

**Section 8.** Amend Sussex County Code, Chapter 115, Article VIII, §115-56 C, SPECIAL USE EXCEPTIONS, by deleting the phrase “Windmills and wind-powered generators.” as it appears therein.

**Section 9.** Amend Sussex County Code, Chapter 115, Article IX, §115-64 C, SPECIAL USE EXCEPTIONS, by deleting the phrase “Windmills and wind-powered generators.” as it appears therein.

**Section 10.** Amend Sussex County Code, Chapter 115, Article X, §115-70, PERMITTED ACCESSORY USES, by adding a new subsection 70 B. to read as follows:

B.  
A wind turbine which meets § 115-194.4 as a permitted use.

**Section 11.** Amend Sussex County Code, Chapter 115, Article X, §115-72 C, SPECIAL USE EXCEPTIONS, by deleting the phrase “Windmills and wind-powered generators.” as it appears therein.

**Section 12.** Amend Sussex County Code, Chapter 115, Article XI, §115-80 C, SPECIAL USE EXCEPTIONS, by deleting the phrase “Windmills and wind-powered generators.” as it appears therein.

**Section 13.** Amend Sussex County Code, Chapter 115, Article XIA, §115-83.6 C, SPECIAL USE EXCEPTIONS, by deleting the phrase “Windmills and wind-powered generators.” as it appears therein.

**Section 14.** Amend Sussex County Code, Chapter 115, Article XII, §115-88 C, SPECIAL USE EXCEPTIONS, by deleting the phrase “Windmills and wind-powered generators.” as it appears therein.

**Section 15.** Amend Sussex County Code, Chapter 115, Article XIII, §115-95 C, PERMITTED ACCESSORY USES, by deleting the phrase “Windmills and wind-powered generators.” and inserting in lieu thereof a new sentence to read as follows:

(C)

A wind turbine which meets § 115-194.4 as a permitted use. [Windmills and wind-powered generators.]

**Section 16.** Amend Sussex County Code, Chapter 115, Article XIV, §115-103 C, PERMITTED ACCESSORY USES, by deleting the phrase “Windmills and wind-powered generators.” and inserting in lieu thereof a new sentence to read as follows:

(C)

A wind turbine which meets § 115-194.4 as a permitted use. [Windmills and wind-powered generators.]

**Section 17.** Amend Sussex County Code, Chapter 115, Article XV, §115-112 C, PERMITTED ACCESSORY USES, by deleting the phrase “Windmills and wind-powered generators.” and inserting in lieu thereof a new sentence to read as follows:

(C)

A wind turbine which meets § 115-194.4 as a permitted use. [Windmills and wind-powered generators.]

**Section 18.** Amend Sussex County Code, Chapter 115, Article XXV §115, SUPPLEMENTARY REGULATIONS, by adding a new § 115-194.4, WIND TURBINES, to read as follows:

§ 115-194.4 WIND TURBINES

A.

The following regulations shall apply to a wind turbine as an accessory use for residential purposes pursuant to applicable state law.

(1)

Only one wind turbine shall be allowed per lot under this subsection.

(2)

Any wind turbine shall be set back a minimum distance that is equal to the turbine height from each adjoining property line. Turbine height means the height of the tower plus the length of one blade.

(3)

The wind turbine shall comply with the height restriction stated in § 115-179 A.

(4)

The wind turbine shall comply with the Airport Hazard Zoning regulations.

(5)

Wind turbines shall be assembled, installed and maintained in accordance with the manufacturer's instructions. Applicant shall submit an engineering certification for the foundation and windmill structure in regards to the construction of the wind turbine. A County Inspector shall verify the construction according to these specifications.

(6)

The owner of the wind turbine shall completely remove all above ground structures within 12 months after the wind turbine is no longer used to generate electricity. The owner shall provide proof of operation if requested by a County inspector.

(7)

A wind turbine that is not attached to a building shall not be climbable for at least the first 12 feet above the ground level, unless it is surrounded by a fence with a minimum height of 6 feet. Wind turbine(s) shall have appropriate lighting pursuant to §115-194.2 H.

B.

The following regulations shall apply to one or more wind turbine(s) with a total turbine height of greater than 100 feet but less than 200 feet or where 2 or more windmills are proposed of less than 100 feet turbine height for non residential uses.

(1)

Any wind turbine shall be set back a minimum distance that is equal to the turbine height from each adjoining property line. Turbine height means the height of the tower plus the length of one blade.

(2)

The wind turbine(s) shall comply with the Airport Hazard Zoning regulations.

(3)

Wind turbine(s) shall be assembled, installed and maintained in accordance with the manufacturer's instructions. Applicant shall submit an engineering certification for the foundation and windmill structure in regards to the construction of the wind turbine. A County Inspector shall verify the construction according to these specifications.

(4)

The owner of the wind turbine(s) shall completely remove all above ground structures within 12 months after the wind turbine(s) is no longer used to generate electricity. The owner shall provide proof of operation if requested by a County inspector.

(5)

A wind turbine that is not attached to a building shall not be climbable for at least the first 12 feet above the ground level, unless it is surrounded by a fence with a minimum height of 6 feet. Wind turbine(s) shall have appropriate lighting pursuant to §115-194.2 H.

(6)

There shall be a minimum lot area of 5 acres.

C.

The following regulations shall apply to one or more wind turbine(s) with a total turbine height of 200 feet or taller to be located in Industrial Zoning Districts.

(1)

Any wind turbine shall be set back a minimum distance that is equal to the turbine height from each adjoining property line. Turbine height means the height of the tower plus the length of one blade.

(2)

The owner of the wind turbine(s) shall completely remove all above ground structures within 12 months after the wind turbine(s) is no longer used to generate electricity. The owner shall provide proof of operation if requested by a County inspector.

(3)

A wind turbine(s) that is not attached to a building shall not be climbable for at least the first 12 feet above the ground level, unless it is surrounded by a fence with a minimum height of 6 feet. Wind turbine(s) shall have appropriate lighting pursuant to §115-194.2 H.

(4)

Accessory electrical facilities are allowed, such as a transformer.

(5)

There shall be a minimum lot area of 5 acres.

(6)

The wind turbine(s) shall comply with the Airport Hazard Zoning regulations.

(7)

Wind turbine(s) shall be assembled, installed and maintained in accordance with the manufacturer's instructions. Applicant shall submit an engineering certification for the foundation and windmill structure in regards to the construction of the wind turbine. A County Inspector shall verify the construction according to these specifications.

(8)

The applicant shall submit a site plan showing proposed driveways, wind turbines and wood areas proposed to be cleared.

(9)

The applicant shall submit a professional study to analyze the maximum A-weighted noise levels outside of the nearest existing occupied dwellings and the total hours per year that such dwellings will be subject to shadow flicker.

**Section 19.** Amend Sussex County Code, Chapter 115, Article XXVI, §115-210 A(1), SPECIAL USE EXCEPTIONS, by deleting the sentence “Windmills and wind-powered generators on less than five acres.” as it appears therein.

#### Synopsis

This ordinance establishes regulations for wind turbines in Sussex County as the State of Delaware has, by statute, eliminated the role of the Board of Adjustment in the process of approving wind turbines. There is a definition of Wind turbine and windmill that will place in the Code. The ordinance takes out all references to windmills under special use exceptions as that would require Board of Adjustment Review and places the reference in permitted accessory uses. A new section for wind turbines is placed in the code to deal with all heights of requested wind turbines. This ordinance would govern wind turbines in Sussex County along with any other requirements spelled out in 29 Del. C. § 8060.